

## TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

### NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to adopt Sections 1436 and 1950.314.8 of Title 10, California Code of Regulations, under the California Finance Lenders Law and the California Residential Mortgage Lending Act. The proposed regulations require licensees under these laws to implement appropriate and best risk-management practices, to report whether and how they are complying with these best practices, and to maintain documentation of compliance, as specified. The proposed rules help carry out the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators Guidance on Nontraditional Mortgage Product Risks released on November 14, 2006.

### PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed to Karen Fong, Office of Law and Legislation, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m., July 2, 2007. Written comments may also be sent to Karen Fong via electronic mail at [regulations@corp.ca.gov](mailto:regulations@corp.ca.gov) or via fax at (916) 322-5875. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

### INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The Department licenses and regulates finance lenders and brokers under the California Finance Lenders Law, and residential mortgage lenders and servicers under the California Residential Mortgage Lending Act. These laws require licensees to comply with certain requirements relating to books and records, examinations, and reporting. See Financial Code Sections 22156, 22157, 22159, 22701, 50124, 50302, and 50314. Moreover, these laws prohibit licensees from engaging in certain unlawful practices such as unconscionable contracts, loans that do not take into consideration the borrowers' ability to repay, fraudulent underwriting practices, unsafe and injurious practices, and false advertising, as specified. Licensees must also provide clear statements concerning loans, as specified. See, as examples, Financial Code Sections 22161, 22163, 22164, 22302, 22714, 50204, 50308, and 50322.

On November 14, 2006, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) distributed Guidance (the "Guidance") to state agencies that regulate mortgage lenders. The Guidance is available on the AARMR website at [www.aarmr.org](http://www.aarmr.org). The Guidance addresses risks posed by nontraditional mortgage products such as interest-only loans. As stated by CSBS and AARMR in their joint press release, also available on this website, the Guidance serves to inform and protect consumers and enhance the safety and soundness of the industry. Accordingly, CSBS and AARMR encouraged state regulatory agencies to adopt the Guidance and to issue it for use by regulated entities.

This proposed rulemaking implements the Guidance by requiring licensees operating under the California Finance Lenders Law and the California Residential Mortgage Lending Act to: (1) implement appropriate and best risk-management practices on a continuous basis including, but not limited to, the Guidance; (2) report annually to the Department on whether they have made or arranged nontraditional mortgage products, how they have implemented risk-management best practices in relation to the Guidance, whether and how they have put into place internal controls or procedures, as specified, and to also report annually on the number of consumer complaints and non-traditional loan products; and (3) maintain specified documentation as part of their books and records, and make such documentation available to the Commissioner upon request; (4) require clear disclosures for nontraditional loans; and (5) prohibit certain false, misleading, and deceptive advertising.

This proposed rulemaking would require licensees that make or arrange nontraditional mortgage loans, as specified, to provide information concerning their loan products in a form prescribed by the Department. The form (entitled Nontraditional Mortgage Loan Survey and dated 5/1/07) is available on the Department's website at [www.corp.ca.gov](http://www.corp.ca.gov). In addition, the rulemaking would require licensees to cause to deliver, as specified, certain disclosures concerning payment scenarios and loan balance scenarios among various nontraditional loan products, as prescribed by the Department. The form (entitled Comparison of Sample Mortgage Features: Typical Mortgage Transaction and dated 5/1/07) is also available on the Department's website at [www.corp.ca.gov](http://www.corp.ca.gov).

#### AUTHORITY

Sections 22150 and 50304, Financial Code.

#### REFERENCE

Sections 22150, 22156, 22161, 22157, 22159, 22302, 22701, 22714, 50124, 50204, 50302, 50304, 50307, 50308, 50314, and 50322, Financial Code.

#### AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the

date on which they are made available. The Commissioner may thereafter adopt, amend, or repeal the foregoing proposal substantially as set forth above without further notice.

#### AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 01/07-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document PRO 01/07-C. These documents are also available at the Department's website [www.corp.ca.gov](http://www.corp.ca.gov). As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California 95814-4052.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### REPORTING REQUIREMENT

In accordance with Government Code Section 11346.3, subdivision (c), the Department finds that it is necessary for the health, safety, or welfare of the people of this state to adopt regulations requiring a report as proposed by this rulemaking.

#### FISCAL IMPACT

- Cost to Department of Corporations: \$125,000 per year. No cost or savings to any other state agency.
- Direct or indirect costs or savings in federal funding to the state: None.
- Other nondiscretionary costs/savings imposed on local agencies: None

#### DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not impose a mandate on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; or (3) the expansion of businesses currently doing business within the State of California.

#### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

This rulemaking proposal may result in nominal compliance costs for private persons or businesses directly affected by these proposed regulations. It is anticipated that the work will be addressed within existing resources. However, any nominal increase in costs that may occur will likely be offset by savings realized as a result of this rulemaking proposal, to the extent the proposal prevents loan defaults and foreclosures.

#### EFFECT ON SMALL BUSINESS

It has been determined that the proposed rules adopted under the California Finance Lenders Law and the California Residential Mortgage Lending Act will not affect small businesses, because consumer finance lenders and mortgage bankers regulated under these laws are excluded from the definition of small business in Government Code Section 11342(h)(2).

#### CONTACT PERSON

General inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to Karen Fong at (916) 322-3553. Specific inquiries regarding the substance of the proposed regulation may be directed to Anne Marie Liu, Corporations Counsel, Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814, (916) 322-3553.

Dated: May 4, 2007  
Sacramento, California

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TIMOTHY L. Le BAS  
Deputy Commissioner  
Office of Law and Legislation